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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

DOLORES MANDRIGUES, individually and)
 on behalf of all others similarly situated,)
)
 Plaintiff,)
)
 v.)
)
)
 WORLD SAVINGS, INC., WORLD SAVINGS)
 BANK, FSB, WACHOVIA MORTGAGE)
 CORPORATION, and DOES 1 through 10)
 inclusive,)
)
 Defendants.)

CASE NO. C-07-04497 RS
FIRST AMENDED CLASS ACTION
COMPLAINT FOR:
 (1) **Violations of the Truth in Lending Act, 15**
U.S.C. §1601, et seq;
 (2) **Violation of Bus. & Prof. Code §17200, et**
seq. - "Unlawful" Business Practices
(TILA);
 (3) **Violation of Bus. & Prof. Code §17200, et**
seq. - "Unfair" and "Fraudulent" Business
Practices;
 (4) **Breach of Contract;**
 (5) **Breach of the Covenant of Good Faith and**
Fair Dealing; and
 (6) **Violation of Bus. & Prof. Code §17200, et**
seq. - "Unlawful" Business Practices (Fin.
Code § 22302).

JURY TRIAL DEMANDED

1 Plaintiff, DOLORES MANDRIGUES, individually and on behalf of all others similarly situated
2 alleges as follows:

3
4 **I.**

5 **INTRODUCTION**

6 1. This is an action pursuant to the Truth in Lending Act (“TILA”), 15 U.S.C. §1601, *et*
7 *seq.*, California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200, *et seq.*, and other
8 statutory and common law in effect. Plaintiff DOLORES MANDRIGUES, individually, and on behalf
9 of all others similarly situated, brings this action against WORLD SAVINGS, INC., WORLD
10 SAVINGS BANK, FSB, WACHOVIA MORTGAGE CORPORATION, and DOES 1-10 (collectively
11 “Defendants”), based, in part, on Defendants’ failure to clearly and conspicuously disclose to Plaintiff
12 and the Class Members, in Defendants Option Adjustable Rate Mortgage (“ARM”) loan documents, and
13 in the required disclosure statements, accompanying the loans, (i) the actual interest rate on the note(s)
14 (12 C.F.R. § 226.17); (ii) that payments on the notes at the teaser rate will result in negative
15 amortization and that the principal balance will increase (12 C.F.R. § 226.19); and (iii) that the initial
16 interest rate provided was discounted and does not reflect the actual interest that Plaintiff and Class
17 members would be paying on the Note(s).

18
19 **II.**

20 **THE PARTIES**

21 2. Plaintiff, DOLORES MANDRIGUES (“Plaintiff”) is, and at all times relevant to this
22 Complaint, was an individual residing in Milpitas, California. On or about August 4, 2006, Plaintiff
23 refinanced her existing home loan and entered into an Option ARM loan agreement with Defendants.
24 The Option ARM loan was secured by Plaintiff’s primary residence. Attached hereto as Exhibit 1 is a
25 true and correct copy of the Note and Truth and Lending Disclosure Form pertinent to this action.

26 3. Defendant WORLD SAVINGS, INC. is a California corporation licensed to do, and is
27 doing business in California. At all relevant times hereto, WORLD SAVINGS, INC., was and is
28 engaged in the business of promoting, marketing, distributing and selling the Option Arm loans that are

1 the subject of this Complaint. WORLD SAVINGS, INC. transacts business in Santa Clara County,
2 California and at all relevant times promoted, distributed, and sold the Option Arm loans that are the
3 subject of this Complaint throughout the United States, including Santa Clara County, California.
4 WORLD SAVINGS, INC. has significant contacts with Santa Clara County, California, and the
5 activities complained of herein occurred, in whole or in part, in Santa Clara County, California.

6 4. Defendant, WORLD SAVINGS BANK, FSB, was and is a business organization form
7 unknown. Plaintiff is informed and believes and thereupon alleges that Defendant WORLD SAVINGS
8 BANK, FSB is a corporation; that Defendant WORLD SAVINGS BANK, FSB is a partnership; and that
9 Defendant, WORLD SAVINGS BANK, FSB, is a division of Defendant, WORLD SAVINGS, INC.

10 5. Defendant, WACHOVIA MORTGAGE CORPORATION (“WACHOVIA”), is a North
11 Carolina corporation licensed to do, and is doing business in California. At all relevant times hereto
12 WACHOVIA was and is engaged in the business of promoting, marketing, distributing and selling the
13 Option Arm loans that are the subject of this Complaint. WACHOVIA transacts business in Santa
14 Clara County, California and at all relevant times promoted, distributed, and sold the Option Arm loans
15 throughout the United States, including Santa Clara County, California. WACHOVIA has significant
16 contacts with Santa Clara County, California, and the activities complained of herein occurred, in whole
17 or in part, in Santa Clara County, California.

18 6. Defendants, WORLD SAVINGS, INC., WORLD SAVINGS BANK, FSB,
19 WACHOVIA MORTGAGE CORPORATION, and DOES 1 through 10, shall hereinafter be referred to
20 collectively as “Defendants.”

21 7. At all times mentioned herein, Defendants, and each of them, were engaged in the
22 business of promoting, marketing, distributing, and selling the Option Arm loans that are the subject of
23 this Complaint, throughout the United States, including Santa Clara County, California.

24 8. Plaintiff is informed and believes, and thereon alleges that each and all of the
25 aforementioned Defendants are responsible in some manner, either by act or omission, strict liability,
26 fraud, deceit, fraudulent concealment, negligence, respondeat superior, breach of contract or otherwise,
27 for the occurrences herein alleged, and that Plaintiff’s injuries, as herein alleged, were proximately
28 caused by the conduct of Defendants.

1 9. Plaintiff is informed and believes, and thereon alleges, that at all times material hereto
2 and mentioned herein, each of the Defendants (both named and DOE defendants) sued herein were the
3 agent, servant, employer, joint venturer, partner, division, owner, subsidiary, alias, assignee and/or alter-
4 ego of each of the remaining Defendants and were at all times acting within the purpose and scope of
5 such agency, servitude, joint venture, division, ownership, subsidiary, alias, assignment, alter-ego,
6 partnership or employment and with the authority, consent, approval and ratification of each remaining
7 Defendant.

8 10. At all times herein mentioned, each Defendant was the co-conspirator, agent, servant,
9 employee, assignee and/or joint venturer of each of the other Defendants and was acting within the
10 course and scope of said conspiracy, agency, employment, assignment and/or joint venture and with the
11 permission and consent of each of the other Defendants.

12 11. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of them,
13 are, and at all material times relevant to this Complaint, performed the acts alleged herein and/or
14 otherwise conducted business in California. Defendants, and each of them, are corporations or other
15 business entities, form unknown, have, and are doing business in this judicial district.

16 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10,
17 inclusive, are securitized trusts, equity funds, collateralized debt obligations (CDO), CDO underwriters,
18 CDO trustees, hedge funds or other entities that acted as additional lenders, loan originators and/or are
19 assignees to the loans which are the subject of this action. Plaintiff will seek leave of Court to replace
20 the fictitious names of these entities with their true names when they are discovered by Plaintiff herein.

21 13. The true names and capacities, whether individual, corporate, associate or otherwise, of
22 Defendants DOES 1 through 10, inclusive, and each of them, are unknown to Plaintiff at this time, and
23 Plaintiff therefore sue said Defendants by such fictitious names. Plaintiff alleges, on information and
24 belief, that each Doe defendant is responsible for the actions herein alleged. Plaintiff will seek leave of
25 Court to amend this Complaint when the names of said Doe defendants have been ascertained.

26 14. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein,
27 Defendants, and each of them, including without limitation those Defendants herein sued as DOES,
28 were acting in concert or participation with each other, or were joint participants and collaborators in the

1 acts complained of, and were the agents or employees of the others in doing the acts complained of
2 herein, each and all of them acting within the course and scope of said agency and/or employment by the
3 others, each and all of them acting in concert one with the other and all together.

4
5 **III.**

6 **JURISDICTION AND VENUE**

7 15. This Court has subject matter jurisdiction pursuant to 15 U.S.C § 1601 *et seq.* and 28
8 U.S.C. § 1331.

9 16. This Court has personal jurisdiction over the parties in this action by the fact that
10 Defendants are either individuals who reside in this District within California or are corporations duly
11 licenced to do business in California.

12 17. Venue is proper within this District and Division pursuant to 28 U.S.C. §1391(b) because
13 a substantial part of the events and omissions giving rise to the claims occurred in this district, and
14 because there is personal jurisdiction in this district over the named Defendant because it regularly
15 conducts business in this judicial district.

16
17 **IV.**

18 **FACTS COMMON TO ALL CAUSES OF ACTION**

19 18. WORLD SAVINGS, INC., WORLD SAVINGS BANK, FSB and WACHOVIA are
20 amongst the largest financial institutions in the United States.

21 19. The instant action arises out of residential mortgage loan transactions in which
22 Defendants failed to disclose pertinent information in a clear and conspicuous manner to Plaintiff and
23 the Class members, in writing, as required by law.

24 20. This action also concerns Defendants' unlawful, fraudulent and unfair business acts or
25 practices. Defendants engaged in a campaign of deceptive conduct and concealment aimed at
26 maximizing the number of consumers who would accept this type of loan in order to maximize
27 Defendants' profits, even as Defendants knew their conduct would cause many of these consumers to
28 lose their homes through foreclosure.

1 21. Plaintiff, along with thousands of other similarly situated consumers, were sold an Option
2 ARM home loan by Defendants. The Option ARM loan sold to Plaintiff and the Class is a deceptively
3 devised financial product. The loan has a variable rate feature with payment caps. The product was
4 sold based on the promise of a low, fixed interest rate, when in fact Plaintiff and the Class were charged
5 a different, much greater interest rate than promised. Further, Defendants disguised from Plaintiff and
6 the Class the fact that Defendants' Option ARM loan was designed to, and did, cause negative
7 amortization to occur. Further still, once lured into these loans, consumers cannot easily extricate
8 themselves from these loans. Defendants' Option ARM loan includes a stiff and onerous prepayment
9 penalty making it extremely difficult to extricate from the loans.

10 22. The Option ARM loan Defendants sold to Plaintiff violates the Truth In Lending Act
11 (TILA). TILA is supposed to protect consumers; it mandates certain disclosures be made by lenders to
12 borrowers concerning the terms and conditions of their home loans. Defendants failed to make these
13 disclosures in connection with the Option ARM loan sold to Plaintiff and the Class.

14 23. At all times relevant, Defendants promoted their Option ARM loan product to
15 consumers, including Plaintiff, in a false or deceptive manner. Defendants promoted to the general
16 public a loan which would provide a very low, fixed interest rate for a period of three (3) to five (5)
17 years and no negative amortization. Defendants used this "teaser" rate to lure Plaintiff into purchasing
18 Defendants' Option ARM loan product. However, the low fixed rate was illusory, a false promise.
19 Plaintiff and others similarly situated did not receive the benefit of the low rate promised to them. Once
20 signed on to Defendants' loan, the interest rate applied to Plaintiff's and Class members' loans was
21 immediately and significantly increased.

22 24. Plaintiff and others similarly situated were consumers who applied for a mortgage loan
23 through Defendants. During the loan application process, in each case, Defendants represented to
24 Plaintiff and the Class members that in accepting these loan terms, Plaintiff would be able to lower their
25 mortgage payment and save money. Defendants initiated this scheme in order to maximize the amount
26 of the loans issued to consumers and to maximize Defendants' profits.

27 25. Based on the Defendants' representations, and the conduct alleged herein, Plaintiff and
28 Class members agreed to finance their primary residence through Defendants' Option ARM loan.

1 Plaintiff and Class members were told they were being sold a home loan with a low interest rate of
2 between 1% and 3.0% interest rate (the “teaser” rate), and that the interest rate was fixed for the first
3 three (3) to five (5) years of the loan. Defendants also informed Plaintiff, and Plaintiff was lead to
4 believe, that if they made payments based on the promised low interest rate, which were the payments
5 reflected in the written payment schedule provided to them by Defendants, the loan was a no negative
6 amortization home loan. Plaintiff’s payments were to be applied to their principal loan balances as well
7 as to interest.

8 26. After, the purported three (3) - five (5) year fixed interest period, Plaintiff and the Class
9 members reasonably believed, based on the representations contained in the documents Defendant
10 provided to Plaintiff and the Class members, that they would be able to refinance their loan and get a
11 new loan before their scheduled payments increased. However, the payment schedule provided by
12 Defendants failed to disclose and by omission failed to inform these consumers that due to the negative
13 amortization that was purposefully built into these loans, Plaintiff and the Class members would be
14 unable to refinance their homes as their would be little or no equity left to refinance.

15 27. Plaintiff believed these facts to be true because that is what the Defendants wanted
16 consumers to believe. Defendants aggressively sold their product as a fixed, low interest home loan.
17 Defendants knew that if they sold these loans in such a manner, their Option ARM loan product would
18 be a hugely popular and profitable product for them. Defendants also knew, however, that they were
19 selling their product in a false and deceptive manner. While Defendants trumpeted their low, fixed rate
20 loans to the public, Defendants knew their promise of low, fixed interest was illusory.

21 28. In fact, Defendants’ Option ARM loan possessed a low, fixed **payment** but not a low,
22 fixed interest rate. Unbeknownst to Plaintiff and Class members, the actual interest rate they were
23 charged on their loans was not fixed, was not the low teaser interest rate stated in the loan
24 documentation and was in fact considerably higher than going market rates. And, after purchasing
25 Defendants’ Option ARM loan product, Plaintiff and Class members did not actually receive the benefit
26 of the low, teaser rate at all in some cases, or at best, received that rate for only a single month.
27 Immediately, thereafter, Defendants in every instance and for every loan, increased the interest rate they
28 charged consumers. The now-increased interest charges incurred by Plaintiff and Class members over

1 and above the fixed interest payment rate were added to the principal balance on their home loans in
 2 ever increasing increments, substantially reducing the equity in these borrowers' homes.

3 29. In stark contrast to this reality, Defendants, through the standardized loan contracts they
 4 created and supplied to Plaintiff and the Class, Defendants stated that negative amortization was only a
 5 possibility and would occur only if the payments were not sufficient. Defendants concealed and failed
 6 to disclose the fact that the loan as presented and designed, in fact, *guaranteed* negative amortization.
 7 Defendants failed to disclose and omitted the objectively material fact that negative amortization would
 8 occur if the consumer followed the payment schedule set forth by Defendants in the loan documents.
 9 This information was objectively material and necessary for consumers to make an informed decision
 10 because this would have revealed that the loan's principal balance would increase if the payment
 11 schedule was followed, thereby rendering it impossible to refinance the loan at or around the time the
 12 prepayment penalty expired and/or by the time the interest and payment rates re-set. In this respect,
 13 Defendants utterly failed to place any warning on the Truth and Lending Disclosure Form about
 14 negative amortization.

15 30. At all times relevant, once Plaintiff and the Class members accepted Defendants' Option
 16 ARM loan contract, they had no viable option by which to extricate themselves because these Option
 17 ARM loan agreements included a draconian pre-payment penalty for a period of up to three years.

18 31. The Option ARM loans sold by Defendants all have the following uniform
 19 characteristics:

- 20 (a) There is an initial low interest rate or "teaser" rate that was used to entice the
 21 Plaintiff into entering into the loan. The rate offered was typically 1%-3%;
- 22 (b) The loan has with it a corresponding low payment schedule. The marketing of the
 23 loan with the above teaser was intended to misleadingly portray to consumers that
 24 the low payments for the first three (3) to five (5) years were a direct result of the
 25 low interest rate being offered;
- 26 (c) The initial payments in the required disclosures were equal to the low interest rate
 27 being offered. The purpose was to assure that if someone were to calculate what
 28 the payment would be at the low offered interest rate, it corresponded to the

1 payment schedule. This portrayal was intended to further mislead consumers into
2 believing that the payments were enough to cover all principal and interest;

3 (d) The payment has a capped annual increase on the payment amount; and

4 (e) The loan includes a prepayment penalty preventing consumers from securing a
5 new loan for a period of up to three (3) years.

6 32. Defendants uniformly failed to disclose and by omission failed inform consumers,
7 including Plaintiff and the Class members, in a clear and conspicuous manner that the fixed “teaser” rate
8 offered by Defendants was actually never applied to their loans, or, at best, was only applied for thirty
9 (30) days. Thereafter, the true interest charged on the loans was significantly higher than the rate
10 promised.

11 33. Defendants uniformly failed to disclose and by omission failed to inform consumers,
12 including Plaintiff and the Class members, that the payments set forth in Defendants’ schedule of
13 payments were insufficient to cover the actual charges and that this was, in fact, a loan that would cause
14 the Plaintiff’s and the Class members to lose the equity they have in their home.

15 34. Defendants uniformly failed to disclose and by omission failed to inform consumers,
16 including Plaintiff and the Class members, that when the principal balance increased to a certain level,
17 they would no longer have the option of making the fixed interest payment amount.

18 35. Disclosing whether a payment will result in negative amortization is of critical
19 importance to consumers. If the disclosed payment rate is insufficient to pay both principle and interest,
20 one of the consequences of negative amortization is a loss of equity. Defendants are and at all times
21 relevant hereto have been aware that clear and conspicuous disclosure of the actual interest rate and a
22 payment rate sufficient to avoid negative amortization and the concomitant loss of equity is extremely
23 important material information.

24 36. At all times relevant, Defendants, and each of them, knew or should have known, or were
25 reckless in not knowing, that: (i) the payment rate provided to Plaintiff and the Class members was
26 insufficient to pay both interest and principle; (ii) that negative amortization was substantially certain to
27 occur if Plaintiff and the Class members made payments according to the payment schedule provided by
28 Defendants; and (iii) that loss of equity and/or loss of Plaintiff’s and the Class members residence was

1 substantially certain to occur if Plaintiff and the Class members made payments according to the
2 payment schedule provided by Defendants.

3 37. In spite of its knowledge, Defendants sold its ARM loans as product that would provide
4 Plaintiff and the Class members with a low interest rate for the first three (3) to five (5) years of the
5 loan, and at all times relevant, failed to disclose and/or concealed by making partial representations of
6 material facts when Defendants had exclusive knowledge of material facts that negative amortization
7 was certain to occur. This concealed and omitted information was not known to Plaintiff and the Class
8 members and which, at all times relevant, Defendants failed to disclose and/or actively concealed by
9 making such statements and partial, misleading representations to Plaintiff and all others similarly
10 situated. Because the ARM loans did not provide a low interest rate for the first three (3) to five (5)
11 years of the Note and the payment rate disclosed by Defendants was insufficient to pay both principle
12 and interest, negative amortization occurred.

13 38. The true facts about Defendants' ARM loans is that they do not provide the low interest
14 rate promised, and are certain to result in negative amortization.

15 39. Disclosure of a payment rate that is sufficient to pay both principle and interest on the
16 loans is of critical importance consumers. If the disclosed payment rate is insufficient to pay both
17 principle and interest, one of the consequences is that negative amortization or loss of equity will occur.
18 Defendants are and at all times relevant hereto have been aware that the ability of the disclosed payment
19 rate to pay both principle and interest so as to avoid negative amortization is one of the most important
20 terms of a loan.

21 40. To this day, Defendants continue to conceal material information from consumers, and
22 the public, that: (i) the payment rate provided to Plaintiff and the Class members is and was insufficient
23 to pay both principle and interest; (ii) if the disclosed payment schedule is followed, Plaintiff and the
24 Class members will suffer negative amortization; and (ii) loss of equity and/or possession of the
25 property is substantially certain to occur if the disclosed payment schedule is followed. Nevertheless,
26 Defendants have refused to clearly and conspicuously disclose to Plaintiff and the Class members the
27 existence of this important material information and the injury caused thereby, including but not limited
28 to the loss of equity.

41. In the end, the harm caused by Defendants failures to disclose and omissions grossly outweighs any benefit that could be attributed to them.

42. Knowing the truth and motivated by profit and market share, Defendants have knowingly and willfully engaged in the acts and/or omissions to mislead and/or deceive Plaintiff and others similarly situated.

43. The ARM loans have resulted and will continue to result in significant loss and damage to the Class Members, including but not limited to the loss of equity these consumers have or had in their homes.

44. The facts which Defendants misrepresented and concealed, as alleged in the preceding paragraphs, were material to the decisions about whether to purchase the ARM loans in that Plaintiff and others similarly situated would not have purchased these loans but for Defendants' unlawful, unfair, fraudulent and/or deceptive acts and/or practices as alleged herein.

45. Defendants engaged in the unlawful, unfair, fraudulent, untrue and/or deceptive marketing scheme to induce consumers to purchase their ARM loans.

46. Defendants unlawful, unfair, fraudulent, untrue and/or deceptive acts and/or practices were committed with willful and wanton disregard for whether or not Plaintiff or others similarly situated would, in fact, receive a home loan that would actually provide the low interest and payment rate, as promised, for the first three (3) to five (5) years of the loan that is sufficient to pay both principle and interest.

47. Upon information and belief and at all times relevant, Defendants possessed full knowledge and information concerning the above facts about the ARM loans, and otherwise sold these ARM loans throughout the United States, including the State of California.

V.

CLASS ACTION ALLEGATIONS

48. Plaintiff brings this action on behalf of herself, and on behalf of all others similarly situated (the “Class”) pursuant to Federal Rule of Civil Procedure, Rules 23(a), and 23(b), and the case law thereunder. The classes Plaintiff seeks to represent are defined as follows:

The California Class: All individuals who, within the four year period preceding the filing of Plaintiff's Complaint through the date notice is mailed to the Class, received an Option ARM loan through Defendants on their primary residence located in the State of California. Excluded from the California Class are Defendants' employees, officers, directors, agents, representatives, and their family members; and

The National Class: All individuals in the United States of America who, within the four year period preceding the filing of Plaintiff's complaint through the date notice is mailed to the Class, received an Option ARM loan through Defendants on their primary residence located in the United States of America. Excluded from the National Class are Defendants' employees, officers, directors, agents, representatives, and their family members.

An appropriate sub-Class exists for the following Class Members:

All individuals in the United States of America who, within the three year period preceding the filing of Plaintiff's complaint through the date notice is mailed to the Class, received an Option ARM loan through Defendants on their primary residence located in the United States of America. Excluded from the National sub-Class are Defendants' employees, officers, directors, agents, representatives, and their family members.

Plaintiff reserves the right to amend or otherwise alter the Class definitions presented to the Court at the appropriate time, or propose or eliminate sub-Classes, in response to facts learned through discovery, legal arguments advanced by Defendants or otherwise.

49. **Numerosity:** The Class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of Class members is unknown at this time, Plaintiff is informed and believes that the entire Class or Classes consist of approximately tens of thousands of members.

50. **Commonality:** Common questions of law or fact are shared by the Class members. This action is suitable for class treatment because these common questions of fact and law predominate over any individual issues. Such common questions include, but are not limited to, the following:

- (1) Whether Defendants' acts and practices violate the Truth in Lending Act;
- (2) Whether Defendants' conduct violated 12 C.F.R. § 226.17;
- (3) Whether Defendants' conduct violated 12 C.F.R. § 226.19;
- (4) Whether Defendants engaged in unfair business practices aimed at deceiving Plaintiff and the Class members before and during the loan application process;

///

- (5) Whether Defendants, by and through their officers, employees, and agents failed to disclose that the interest rate actually charged on these loans was higher than the rate represented and promised to Plaintiff and the Class members;
- (6) Whether Defendants, by and through their officers, employees and agents concealed, omitted and/or otherwise failed to disclose information they were mandated to disclose under TILA;
- (7) Whether Defendants failed to disclose the true variable nature of interest rates on adjustable rate mortgage loans and adjustable rate home equity loans;
- (8) Whether Defendants failed to properly disclose the process by which negative amortization occurs, ultimately resulting in the recasting of the payment structure over the remaining lifetime of the loans;
- (9) Whether Defendants' failure to apply Plaintiff's and the Class members' payments to principal as promised in the form Notes constitutes a breach of contract, including a breach of the covenant of good faith and fair dealing;
- (10) Whether Defendants' conduct in immediately raising the interest rate on consumers' loans so that no payments were made to the principal balance constitutes breach of the covenant of good faith and fair dealing;
- (11) Whether Defendants' marketing plan and scheme misleadingly portrayed or implied that these loans were fixed rate loans, when Defendants knew that only the periodic payments were fixed (for a time) but that interest rates were not, in fact, "fixed;"
- (12) Whether the terms and conditions of Defendants' Option ARM home loan are unconscionable;
- (13) Whether Plaintiff and the Class are entitled to damages;
- (14) Whether Plaintiff and the Class members are entitled to punitive damages; and
- (15) Whether Plaintiff and the Class members are entitled to rescission.

51. Typicality: Plaintiff's claims are typical of the claims of the Class members. Plaintiff and the other Class members were subjected to the same kind of unlawful conduct and the claims of

1 Plaintiff and the other Class members are based on the same legal theories.

2 52. Adequacy: Plaintiff is an adequate representative of the Class because her interests do
3 not conflict with the interests of the other members of the Class Plaintiff seeks to represent. Plaintiff has
4 retained counsel competent and experienced in complex class action litigation and Plaintiff intends on
5 prosecuting this action vigorously. The interests of members of the Class will be fairly and adequately
6 protected by Plaintiff and her counsel.

7 53. Ascertainable Class: The proposed Classes are ascertainable in that the members can be
8 identified and located using information contained in Defendants' mortgage lending records.

9 54. This case is brought and can be maintained as a class action under Rule 23(b)(1),
10 23(b)(2), and 23(b)(3):

- 11 (a) Risk of Inconsistent Judgments: The unlawful acts and practices of Defendants, as
12 alleged herein, constitute a course of conduct common to Plaintiff and each Class
13 member. Prosecution of separate actions by individual Class members would create a
14 risk of inconsistent or varying adjudications which would establish incompatible
15 standards of conduct for Defendants and/or substantially impair or impede the ability of
16 individual Class members to protect their interests;
- 17 (b) Injunctive and/or Declaratory Relief to the Class is Appropriate: Defendants, and each of
18 them, have acted or refused to act on grounds generally applicable to the Class, thereby
19 making final injunctive relief or corresponding declaratory relief with respect to the Class
20 as a whole appropriate; and
- 21 (c) Predominant Questions of Law or Fact: Questions of law or fact common to the Class
22 members, including those identified above, predominate over questions affecting only
23 individual Class members (if any), and a class action is superior to other available
24 methods for the fair and efficient adjudication of the controversy. Class action treatment
25 will allow a large number of similarly situated consumers to prosecute their common
26 claims in a single forum, simultaneously, efficiently, and without the unnecessary
27 duplication of effort and expense that numerous individual actions would require.
28 Further, an important public interest will be served by addressing the matter as a class

1 action. The cost to the court system of adjudicating each such individual lawsuit would
2 be substantial.

3 4 VI.

5 FIRST CAUSE OF ACTION

6 (Violations of Truth in Lending Laws, 15 U.S.C. §1601, *et seq.*,

7 (Against All Defendants)

8 55. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

9 56. 15 U.S.C. §1601, *et seq.*, is the Federal Truth in Lending Act ("TILA"). The Federal
10 Reserve Board of Governors implements the Federal Truth in Lending Act through Regulation Z (12
11 C.F.R. §226) and its Official Staff Commentary. Compliance by lenders with Regulation Z became
12 mandatory October 1, 1982. Likewise, Official Staff Commentary issued by the Federal Reserve Board
13 is also binding on all lenders.

14 57. The purpose of TILA is to protect consumers. This is stated in 12 C.F.R. § 226.1, which
15 reads:

16 **§226.1 Authority, purpose, coverage, organization, enforcement and**
17 **liability. . .**

18 (b) Purpose. The purpose of this regulation is to promote the informed
19 use of consumer credit by requiring disclosures about its terms and costs.

20 The regulation also gives consumers the right to cancel certain credit
21 transactions that involve a lien on a consumer's principal dwelling . . .

22 58. Reg. Z also mandates very specific disclosure requirements regarding home loans with
23 which lenders, including Defendants, must comply:

24 **§ 226.17. General disclosure requirements.**

25 (a) Form of disclosures. (1) The creditor shall make the disclosures
26 required by this subpart clearly and conspicuously in writing, in a form
27 that the consumer may keep. The disclosures shall be grouped together,
28 shall be segregated from everything else, and shall not contain any

1 information not directly related to the disclosures required under §
 2 226.18.

3 59. The purpose of the TILA is to assure a meaningful disclosure of credit terms so that the
 4 borrowers will be able to compare more readily the various credit terms available to them and avoid the
 5 uninformed use of credit and to protect the consumer against inaccurate and unfair credit billing
 6 practices.

7 60. Defendants' Option ARM loan violates TILA because Defendants failed to comply with
 8 the disclosure requirements mandated by Regulation Z and Official Staff Commentary issued by the
 9 Federal Reserve Board. Defendants failed in a number of ways to clearly, conspicuously and/or
 10 accurately disclose the terms of the Option ARM loan to Plaintiff as Defendants were required to do
 11 under TILA. These violations are apparent on the face of the TILA Disclosure Forms.

12 61. The TILA violations committed by Defendants are more specifically detailed as follows:

13 **A. Defendants' Failure to Clearly and Conspicuously Disclose The Actual Interest Rate**
 14 **Violates Truth in Lending Laws**

15 62. 12 C.F.R. § 226.17 and 12 C.F.R. § 226.19 require the lender to make disclosures
 16 concerning the interest rate in a clear and conspicuous manner. Further, a misleading disclosure is as
 17 much a violation of TILA as a failure to disclose at all. Defendants failed to meet the disclosure
 18 mandates required of them concerning the interest rate Defendants actually applied to Plaintiff's and
 19 Class members' loans, as well as the interest actually charged to Plaintiff and the Class members.

20 63. Defendants' disclosure in the Promissory Note concerning the interest rate is, at best,
 21 unclear and inconspicuous. At worst, it is intentionally deceptive. In either instance, it is certainly
 22 different than the interest rate set forth by Defendants in the TILA Disclosure Form. The interest rate
 23 information set forth by Defendants in the Note conflicts with the interest rate information set forth by
 24 Defendants in the TILA Disclosure Form.

25 64. The interest rate set forth in the Note is the teaser rate that Defendants, in fact, apply to
 26 the loan for a single month. However, Defendants do not make clear in the Note or anywhere else that
 27 this low promised rate (the same rate upon which Defendants base the written payment schedule
 28 provided to Plaintiff) is only offered for the first thirty (30) days of the loan. Defendants employ the

1 most convoluted, confusing and circuitous methodology in describing the interest rate. In one part of
2 the Note, Defendants state that the promised low interest rate is the rate until the “change date.” A
3 description of the change date is found in another part of the Note. The convoluted and disjointed
4 method employed by which Defendants provide this information makes it extremely difficult, if not
5 impossible for anyone to determine that, in fact, that the change date corresponds to the very first
6 monthly payment Plaintiff and the Class members made on their loans.

7 65. The convoluted language used by Defendants to disclose the interest rate on Plaintiff’s
8 and the Class members loans is not clear and conspicuous. Rather, the disclosures used by Defendants
9 were purposefully unclear and meant to mislead and confuse Plaintiff and the Class members. In
10 particular, it is virtually impossible to discern when Plaintiff and the Class members would receive the
11 low interest rate they were promised, if, in fact, it can be determined at all. And, the truth is that
12 Plaintiff and the Class members *never* received the low interest rate, or in some cases received it for
13 only thirty days. Defendants promise of a low interest rate is and was wholly illusory and the deception,
14 as alleged herein, was uniformly practiced on Plaintiff and Class members by Defendants to facilitate
15 sales of their loans to consumers.

16 66. The Note also sets forth the amount of Plaintiff’s and Class members’ initial monthly
17 payments. That amount is equal to what the payment would be if the low interest rate promised to
18 Plaintiff by Defendants was true and was being applied to the principal balance on the loans. This is a
19 further deception committed by Defendants, because the real interest rate charged on the loans by
20 Defendants is much higher than the low interest rate promised to Plaintiff and Class members. Thus, the
21 payment amount provided by Defendants was intended to and did deceive consumers into falsely
22 believing they would, in fact, receive the teaser interest rate promised to them.

23 67. The TILA Disclosure Form is also confusing and deceptive for much the same reason. It
24 shows the scheduled payments for the first three (3) to five (5) years of the loan as being based on the
25 low “teaser” rate Plaintiff and Class members were promised. In truth, however, this payment schedule
26 has no real relation to the interest rate Defendants actually charged Plaintiff and the Class members on
27 their loans.

28 / / /

68. Defendants' failure to clearly, conspicuously and accurately disclose the actual interest rate applied to Plaintiff's and Class members' loans, the Notes expressly state and/or implies that Plaintiff's and the Class members payments will pay off principal and interest on the loan. Based on the payment schedule provided by Defendants in the Note and TILA Disclosure Form, Plaintiff and the Class members were led to believe that they would be paying off both principal and interest on their loans by making payments according to the payment schedule. The contractual language in the Note only makes sense, and can only be true, if the promised low interest rate actually applied to Plaintiff's and the Class members loans was, in fact, the "teaser" rate promised by Defendants. Thus, Plaintiff and the Class members reasonably believed that the low rate promised to them would be applied to their loans. However, the true fact is that the payment schedule provided by Defendants did not pay any principal on the loan at all. The payment schedule provided by Defendants only covered a portion of the interest Defendants charged Plaintiff and the Class members for these loans.

69. Taken separately and in totality, all of the unclear and contradictory information given to, and representations made by Defendants, to Plaintiff and the Class members, violated TILA in that it failed to provide the clear and conspicuous disclosures as required under the Act.

B. Defendants' Failure to Clearly and Conspicuously Disclose Negative Amortization Violates the Truth in Lending Laws

70. 12 C.F.R. § 226.19 sets forth additional specific disclosure requirements for residential home loans:

§ 226.19. Certain residential mortgage and variable-rate transactions. . . .

(b) Certain variable-rate transactions. If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. . .

(vii) *Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an*

1 *explanation of interest rate or payment limitations, negative amortization,*
 2 *and interest rate carryover. (Emphasis added.)*

3 71. These required disclosures must be made in the TILA Disclosure Form with the other
 4 disclosures. The TILA Disclosure Form must state whether the loan *is* a negative amortizing loan and
 5 whether unpaid interest *is* being added to principal.

6 72. In 1995, and continuing each time new Official Staff Commentary was issued, the
 7 Federal Reserve Board made clear that when the loan was a variable rate loan and it had payment caps,
 8 that the disclosure required a definitive statement about negative amortization:

9 12 CFR Part 226

10 [Regulation Z; Docket No. R-0863]

11 Monday, April 3, 1995

12 AGENCY: Board of Governors of the Federal Reserve System.

13 ACTION: Final rule; official staff interpretation.

14 “For the program that gives the borrower an option to cap
 15 monthly payments, the creditor must fully disclose the rules
 16 relating to the payment cap option, including the effects of
 17 exercising it (such as **negative amortization occurs** and
 18 that the **principal balance will increase**)...” (Found at
 19 C.F.R. § 226.19)

20 73. At all times relevant, statutory and common law in effect make it unlawful for a lender,
 21 such as Defendants, to fail to comply the Federal Reserve Board's Official Staff Commentary as well as
 22 Regulation Z and TILA.

23 74. Defendants sold Plaintiff and the Class members an Option ARM loan which has a
 24 variable rate feature with payment caps. Defendants failed to include any reference on the TILA
 25 Disclosure Form that there was negative amortization. There is nothing that would indicate to anyone
 26 that the loan schedule had negative amortization. The payment schedule makes no reference to negative
 27 amortization and makes it appear that the payments cover both principal and interest.

28 ///

1 75. In fact, the only place where Defendants even inferentially reference negative
2 amortization is in the Note. However, they mention it in such a way as to make a reasonable person
3 believe that negative amortization is only a possibility, rather than a certainty. And, these loans are, in
4 fact, designed in such a manner so as to make negative amortization an absolute certainty.

5 76. This attempt at a disclosure did not actually serve to alert or inform the borrowers of
6 anything, much less clearly and conspicuously disclose that the payment schedule provided by
7 Defendants absolutely would not pay both principal and interest, and therefore would guarantee that
8 negative amortization was to occur on these loans. Rather, Defendants made it appear that as long as the
9 payment schedule provided by Defendants was followed, there would be no negative amortization.

10 77. So, even where any language is found describing negative amortization, the language is
11 misleading and deceptive. In fact, Defendants' Option ARM loan was designed in such a way as to
12 guarantee negative amortization. TILA demands more than a statement that the payment could be less
13 when Defendants were well aware that the payment is less, and would always be less, than the full
14 interest and principal.

15 **C. Defendants' Failure to Clearly and Conspicuously Disclose that the Initial Interest**
16 **Rate is Discounted Violates Truth in Lending Laws**

17 78. As previously stated, the informed use of credit means being able to make decisions, as
18 well as being able to plan an individual's finances. Every month consumers look at their income and
19 budget where their funds must be paid. The biggest investment in one's life is generally that person's
20 home. In fact, it is often referred to as "the American Dream" to own a home.

21 79. Variable rate loans are based on a "margin" and an "index." The index is often the Prime
22 Rate or the LIBOR exchange rate. The margin is the amount the lender charges over that rate, basically
23 it is the lender's profit on the loan.

24 80. TILA and Regulation Z require disclosures to be clear and conspicuous so people
25 understand what their obligations are. In particular, when the payment is not based on that index and
26 margin a separate disclosure is required. Further, the disclosure must inform the borrower that the
27 payment they are making is not based on what the index and margin really should be in order to avoid
28 negative amortization. The disclosure must also inform that interest rate and payment may go up and

1 clearly and conspicuously provide the circumstances under which the rate and payment will increase.

2 81. The Federal Reserve Board established disclosure requirements for variable rate loans.
3 26 C.F.R. § 226.19 requires a lender to disclose the frequency of interest rate and payment adjustments
4 to borrowers. If interest rate changes will be imposed more frequently or at different intervals than
5 payment changes, a creditor must disclose the frequency and timing of both types of changes.

6 82. The disclosures required pursuant to 12 C.F.R. § 226.19 are extremely important because
7 Plaintiff and other consumers similarly situated need this information in order to budget their money.
8 They need to know if their house payments are going to go up so that they can plan for it. If the change
9 comes as a surprise, they face a much greater possibility of defaulting on their loans and losing their
10 homes.

11 83. Defendants, and each of them, state only that the interest rate *may* increase in the future.
12 However, an interest rate increase was in fact far more certain than this disclosure led Plaintiff and the
13 Class members to believe. If Defendants had given the Plaintiff and the Class members the promised
14 low interest rate for any initial period of time, the interest rate was guaranteed to go up even without any
15 change in the index. Thus, the increase in the interest rate on these loans was not just a possibility; it
16 was an absolute certainty and Defendants failed and omitted this material information in their
17 disclosures to Plaintiff and the Class members.

18 84. Defendants disclosure statement provided that, the interest rate may increase during the
19 term of this transaction if the index increases. This, however, was not the only circumstance that could
20 cause an increase in the interest rate. The Defendants, and each of them, failed to disclose that the initial
21 interest rate is discounted, creating the possibility of an increase even when the index did not rise. Due
22 to the initial discounted interest rate, the annual interest rate would increase if the index remained
23 constant, or even if the index declined. Because Defendants' disclosure failed to provide this extremely
24 important, material information, Defendants disclosure failed to meet the clear and conspicuous standard
25 mandated under TILA.

26 85. Defendants failed to disclose to Plaintiff and the Class members that their rate was, with
27 100% certainty, going to increase, regardless of whether or not the index upon which their loans are
28 based changed. As such, Defendants violated TILA and Regulation Z with unclear, deceptive and

1 poorly drafted or intentionally misleading disclosure.

2 **D. Defendants' Failure to Disclose the Composite Interest Rate Violates Truth in**
 3 **Lending Laws**

4 86. Defendants provided Plaintiff and Class members with multiple, conflicting interest rates
 5 when describing the costs of this loan. On the TILA Disclosure Form Defendants set forth one interest
 6 rate, while on the Note, Defendants set forth one or two other, different interest rates.

7 87. The official staff commentary to 226 C.F.R. § 17(C)(8) states:

8 *Basis of disclosures in variable-rate transactions.* The disclosures for a
 9 variable-rate transaction must be given for the full term of the transaction
 10 and must be based on the terms in effect at the time of consummation.
 11 Creditors should base the disclosures only on the initial rate and should
 12 not assume that this rate will increase. For example, in a loan with an
 13 initial rate of 10 percent and a 5 percentage points rate cap, creditors
 14 should base the disclosures on the initial rate and should not assume that
 15 this rate will increase 5 percentage points. **However, in a variable-rate**
 16 **transaction with a seller buydown** that is reflected in the credit contract,
 17 **a consumer buydown, or a discounted or premium rate, disclosures**
 18 **should not be based solely on the initial terms. In those transactions,**
 19 **the disclosed annual percentage rate should be a composite rate based**
 20 **on the rate in effect during the initial period and the rate that is the**
 21 **basis of the variable-rate feature for the remainder of the term.** (See
 22 the commentary to section 226.17(c) for a discussion of buydown,
 23 discounted, and premium transactions and the commentary to section
 24 226.19(a)(2) for a discussion of the redisclosure in certain residential
 25 mortgage transactions with a variable-rate feature.)

26 88. The reason for this requirement is clear. Consumers cannot make informed decisions
 27 when they cannot compare the cost of credit to other proposals. It is therefore incumbent upon
 28 Defendants to show the composite interest rate in effect so that the borrowers can understand exactly

1 what they are paying for the loan.

2 89. A lender violates TILA, Reg. Z and the OTS guidelines by failing to list the composite
3 rate in variable rate loans that have a discounted initial rate. The loan sold to Plaintiff and Class
4 members by Defendants is a discounted variable-rate loan. Because Defendants failed to properly,
5 clearly and conspicuously, disclose a composite annual percentage rate on these loans Defendants
6 violated TILA and Regulation Z.

7 90. As a direct and proximate result of Defendants' conduct in violation of TILA, Plaintiff
8 and Class members have suffered injury an amount to be determined at time of trial. If Defendants had
9 not violated TILA and had instead properly disclosed the material terms of Defendants' Option ARM
10 loan product, as alleged herein, Plaintiff and Class members would not have entered into the home loan
11 agreements which are the subject of this action. Because Defendants failed to make proper disclosures
12 in violation of TILA, Plaintiff and Class members now seek redress in an amount and/or type as proven
13 at time of trial.

14 91. WHEREFORE, Plaintiff and the Class members are entitled to an order declaring that
15 Defendants violated TILA, 15 U.S.C. §1601, *et seq.*, that Plaintiff and the Class have the right to rescind
16 pursuant to 15 U.S.C. § 1635 and 12 C.F.R. § 226.23, damages pursuant to 15 U.S.C. § 1640, attorneys
17 fees, litigation costs and expenses and costs of suit, and for an order rescinding Plaintiff's individual
18 mortgage and those of any class member desirous of such relief, and for an order awarding other relief
19 as the Court deems just and proper.

20 21 **VII.**

22 **SECOND CAUSE OF ACTION**

23 **Violation of California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et. seq.* -**

24 **"Unlawful" Business Acts or Practices Predicated on Violations of TILA**

25 **(Against all Defendants)**

26 92. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

27 93. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class, and in her
28 capacity as a private attorney general against all Defendants for their unlawful business acts and/or

1 practices pursuant to California Business and Professions Code Sections 17200 *et seq.*, which prohibits
2 all unlawful business acts and/or practices.

3 94. Plaintiff asserts these claims as she is a representative of an aggrieved group and as a
4 private attorney general on behalf of the general public and other persons who have expended funds that
5 the Defendants should be required to pay or reimburse under the equitable and restitutionary remedies
6 provided by California Business and Professions Code Sections 17200 *et seq.*

7 95. The unlawful acts and practices of Defendants alleged above constitute unlawful business
8 acts and/or practices within the meaning of California Business and Professions Code Sections 17200 *et*
9 *seq.*

10 96. By engaging in the above-described acts and practices, Defendants have committed one
11 or more acts of unfair competition within the meaning of Business and Professions Code Sections
12 17200, *et seq.*

13 97. Defendants' unlawful business acts and/or practice as alleged herein have violated
14 numerous laws and/or regulations and said predicate acts are therefore *per se* violations of §17200, *et*
15 *seq.* These predicate unlawful business acts and/or practices include Defendants failure to comply with
16 the disclosure requirements mandated by TILA, 15 U.S.C. §1601, *et seq.*, Regulation Z and Official
17 Staff Commentary issued by the Federal Reserve Board. And, as described in more detail above,
18 Defendants also failed in a number of ways to clearly or accurately disclose the terms of the ARM loan
19 to Plaintiff and the Class members as required under TILA.

20 98. Defendants' misconduct as alleged herein gave Defendants an unfair competitive
21 advantage over their competitors.

22 99. As a direct and proximate result of the aforementioned acts, Defendants, and each of
23 them, received monies and continues to hold the monies expended by Plaintiff and others similarly
24 situated who purchased the ARM loans as described herein.

25 100. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a
26 constructive trust over, and restitution of, the monies collected and realized by Defendants.

27 101. The unlawful acts and practices, as fully described herein, present a continuing threat to
28 members of the public to be mislead and/or deceived by Defendants as described herein. Plaintiff and

1 other members of the general public have no other remedy of law that will prevent Defendants
2 misconduct as alleged herein from occurring and/or reoccurring in the future.

3 102. As a direct and proximate result of Defendants' unlawful conduct alleged herein, Plaintiff
4 and Class Members have lost thousands if not millions of dollars of equity in their homes. Plaintiff and
5 the Class members are direct victims of the Defendants' unlawful conduct, as herein alleged, and each
6 has suffered injury in fact, and have lost money or property as a result of Defendants' unfair
7 competition.

8 103. WHEREFORE, Plaintiff and members of the Classes are entitled to equitable relief,
9 including restitution, restitutionary disgorgement of all profits accruing to Defendants because of their
10 unlawful and deceptive acts and practices, attorneys fees and costs, declaratory relief, and a permanent
11 injunction enjoining Defendants from their unlawful activity.

12 13 **VIII.**

14 **THIRD CAUSE OF ACTION**

15 **(Violation of California's Unfair Competition Law, Bus. & Prof. Code §17200 *et seq.*,**

16 **"Unfair" and "Fraudulent" Business Acts or Practices,**

17 **(Against all Defendants)**

18 104. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

19 105. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class, and in her
20 capacity as a private attorney general against all Defendants for their unfair, fraudulent and/or deceptive
21 business acts and/or practices pursuant to California Business and Professions Code Sections 17200 *et*
22 *seq.*, which prohibits all unfair and/or fraudulent business acts and/or practices.

23 106. Plaintiff asserts these claims as she is a representative of an aggrieved group and as
24 private attorney general on behalf of the general public and other persons who have expended funds that
25 the Defendants should be required to pay or reimburse under the equitable and restitutionary remedies
26 provided by California Business and Professions Code Sections 17200 *et seq.*

27 107. The instant claim is predicated on the generally applicable duty of any contracting party
28 to not misrepresent material facts, and on the duty to refrain from unfair and deceptive business

1 practices. The Plaintiff and the Class members hereby seek to enforce a general proscription of unfair
2 business practices and the requirement to refrain from deceptive conduct. The instant claim is
3 predicated on duties that govern anyone engaged in any business and anyone contracting with anyone
4 else.

5 108. At all times relevant, Defendants engaged in a pattern of deceptive conduct and
6 concealment aimed at maximizing the number of borrowers who would accept their Option ARM loan.
7 Defendants, and each of them, sold Plaintiff and the Class members a deceptively devised financial
8 product. Defendants sold their Option ARM loan product to consumers, including Plaintiff and the
9 Class members, in a false or deceptive manner. Defendants promised that the loan would have a very
10 low, fixed interest rate for a period of three (3) to five (5) years and no negative amortization. Further,
11 Defendants disguised from Plaintiff and the Class members the fact that Defendants' Option ARM loan
12 was designed to, and did, cause negative amortization to occur.

13 109. Defendants lured Plaintiff and the Class members into the Option ARM loan with
14 promises of low fixed interest. Once Plaintiff and the Class members entered into these loans,
15 Defendants switched the interest rate charged on the loans to a much higher rate than the one they were
16 promised. After entering these loans, Class members could not escape because Defendants purposefully
17 placed into these loans an extremely onerous prepayment penalty that made it prohibitively expensive
18 for consumers to extricate themselves from these loans. Thus, once on the hook, consumers could not
19 escape from Defendants loans.

20 110. Plaintiff and Class members were consumers who applied for a mortgage loan through
21 Defendants. During the loan application process, in each case, Defendants uniformly represented to
22 Plaintiff and Class members that in accepting these loan terms, Plaintiff and Class members would be
23 able to lower their mortgage payment and save money.

24 111. Defendants promoted their Option ARM loan as having a low fixed interest rate, i.e.,
25 typically between 1% and 3%. However, Defendants did not disclose that this was just a "teaser" rate,
26 the purpose of which was to get consumers to enter into loan agreements with Defendants. Defendants
27 did not disclose to Plaintiff and the Class members that the "teaser" rate was not the fixed rate that
28 Defendants would actually charge Plaintiff and the Class members on their outstanding loan balances.

1 112. Based on the Defendants' representations and conduct, Plaintiff and the Class members
2 agreed to finance their primary residence through Defendants' Option ARM loan. Plaintiff and the
3 Class members were told they were being sold a home loan with a low interest rate, fixed for the first
4 three (3) to five (5) years of the loan. Plaintiff and the Class members were also lead to believe that if
5 they made payments based on this promised low "teaser" interest rate, and the payment schedule
6 provided to them by Defendants, that the loan was a no negative amortization home loan. After, the
7 fixed interest period, Plaintiff and the Class members were told their rate "may" change. And, Plaintiff
8 believed they would then be able to re-finance to another home loan. Plaintiff and the Class members
9 believed these facts to be true because that is what the Defendants wanted consumers to believe, that is
10 what Defendants lead consumers to believe.

11 113. Defendants aggressively sold their product as a fixed low interest home loan. Defendants
12 knew that if they sold these loans in such a manner, their Option ARM loan product would be a hugely
13 popular and profitable product for them. Defendants also knew, however, that they were marketing their
14 product in a false and deceptive manner. While Defendants trumpeted their low, fixed rate loans to the
15 public, Defendants knew, however, that this was not entirely true.

16 114. In fact, Defendants' Option ARM loan possessed a low, fixed *payment* but not a low,
17 fixed interest rate. Unbeknownst to Plaintiff and Class members, the actual interest rate they were
18 charged on their loans was not fixed. After purchasing Defendants' Option ARM loan product, Plaintiff
19 and class members never actually received the benefit of the low interest rate promised to them, or, in
20 some cases, consumers received the low rate for just a single month. Immediately, thereafter,
21 Defendants in every instance and for every loan increased the interest rate they charged Plaintiff and the
22 Class members. Once Plaintiff and Class members accepted Defendants' Option ARM loan, they had
23 no viable option to extricate themselves because of these loan agreements included a draconian pre-
24 payment penalty.

25 115. Defendants perpetrated a bait and switch scheme on Plaintiff and Class members.
26 Defendants' conduct and failure to disclose the whole truth about the loan's interest rate and to describe
27 the loan as having a fixed interest rate was deceptive and unfair. Defendants initiated this scheme in
28 order to maximize the amount of the loans issued to consumers and to maximize Defendants' profits.

1 116. The acts, misrepresentations, omissions, and practices of Defendants alleged above
2 constitute unfair, and/or fraudulent business acts and/or practices within the meaning of California
3 Business and Professions Code Sections 17200 et seq.

4 117. By engaging in the above-described acts and practices, Defendants have
5 committed one or more acts of unfair competition within the meaning of Business and Professions Code
6 Sections 17200, et seq.

7 118. Defendants' conduct, as fully described above, was likely to deceive members of the
8 consuming public, and at all times, Defendants' failures to disclose and omission of material facts have
9 been and continue to be unfair, fraudulent, untrue and/or deceptive.

10 119. Defendants' misconduct as alleged herein gave Defendants an unfair competitive
11 advantage over their competitors.

12 120. As a direct and proximate result of the aforementioned acts, Defendants, and each of
13 them, received monies and continues to hold the monies expended by Plaintiff and others similarly
14 situated who purchased the ARM loans as described herein.

15 121. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a
16 constructive trust over, and restitution of, the monies collected and realized by Defendants.

17 122. The harm to Plaintiff, members of the general public and others similarly situated
18 outweighs the utility of Defendants' policies, acts and/or practices and, consequently Defendants'
19 conduct herein constitutes an unlawful business act or practice within the meaning of California
20 Business & Professions Code Sections 17200 et seq.

21 123. The unfair, deceptive and/or fraudulent business practices of Defendants, as fully
22 described herein, present a continuing threat to members of the public to be mislead and/or deceived by
23 Defendants ARM loans as described herein. Plaintiff and other members of the general public have no
24 other remedy of law that will prevent Defendants misconduct as alleged herein from occurring and/or
25 reoccurring in the future.

26 124. As a direct and proximate result of Defendants' unfair and/or fraudulent conduct alleged
27 herein, Plaintiff and Class Members have lost thousands if not millions of dollars of equity in their
28 homes. Plaintiff and Class members are direct victims of the Defendants' unlawful conduct, and each

1 has suffered injury in fact, and have lost money or property as a result of Defendants' unfair
2 competition.

3 125. WHEREFORE, Plaintiff and members of the Classes are entitled to equitable relief,
4 including restitution, restitutionary disgorgement of all profits accruing to Defendants because of their
5 unfair, fraudulent, and deceptive acts and/or practices, attorneys fees and costs, declaratory relief, and a
6 permanent injunction enjoining Defendants from their unfair, fraudulent and deceitful activity.

7
8 **IX.**

9 **FOURTH CAUSE OF ACTION**

10 **Breach of Contract**

11 **(Against All Defendants)**

12 126. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

13 127. Plaintiff and Class members entered into a written home loan agreement – the contract or
14 Note – with Defendants. The Note was drafted by Defendants and could not be modified by Plaintiff or
15 Class members. The Note describes terms and respective obligations applicable to the parties herein.

16 128. The Note describes Plaintiff's and Class members' interest rate on the loan as a low
17 interest rate, typically between 1% and 3%. In addition, as required by federal law, the Defendants
18 provided a Truth In Lending Disclosure concerning the home loan agreement that shows a payment
19 schedule based on that low 1% to 3% interest rate. For the first three (3) to five (5) years the payment
20 schedule shows that Plaintiff's and Class members' monthly payment obligations to Defendants are the
21 exact payments necessary to pay off all principal and interest during the terms of the loans if, indeed, the
22 interest rate actually charged by Defendants on the loans was the low interest rate promised.

23 129. Defendants drafted the Note and did not allow Plaintiff or the Class members any
24 opportunity to make changes to the Note and due to Defendants superior bargaining position, the Note
25 was offered on a take it or leave it basis. As such, the Notes at issue are contracts of adhesion.

26 130. Defendants expressly and/or through their conduct and actions agreed that Plaintiff's and
27 the Class members' monthly payment obligations would be sufficient to pay both the principal and
28 interest owed on the loans. Defendants breached this agreement and never applied any of Plaintiff's and

1 the Class members' payments to principal.

2 131. The written payment schedules prepared by Defendants, and applicable to Plaintiff's and
3 Class members' loans, show that the payment amounts owed by Plaintiff and Class members to
4 Defendants in year one are exactly equal to the amount required to pay off the loan if, indeed, the
5 interest actually charged on the loan was the low interest rate promised. If the Defendants did as
6 promised, the payments would have been sufficient to pay both principal and interest amounts.

7 132. Instead, Defendants immediately raised Plaintiff's and Class members' interest rates and
8 applied *no part* of Plaintiff's and Class members' payments were applied to the principal balances on
9 their loans. In fact, because Defendants charged more interest than was agreed to and payments, as
10 disclosed by Defendants, were, at all times relevant, insufficient to cover the interest charge and thus
11 principal balances increased (which is the negative amortization built into the loan).

12 133. Defendants breached the written contractual agreement by failing to apply any portion of
13 Plaintiff's and the Class members' monthly payments towards their principal loan balances.

14 134. Plaintiff and the Class members, on the other hand, did all of those things the contract
15 required of them. Plaintiff and the Class members made monthly payments in the amount required by
16 the terms of the Note and reflected in the payment schedule prepared by Defendants.

17 135. As a result of Defendants' breach of the agreement, Plaintiff and the Class members have
18 suffered harm. Plaintiff and Class members have incurred additional charges to their principal loan
19 balance. Plaintiff and Class members have incurred and will continue to incur additional interest
20 charges on the principal loan balance and surplus interest added to Plaintiff's and Class members'
21 principal loan balance. Furthermore, Defendants' breach has placed Plaintiff and Class members in
22 danger of losing their homes through foreclosure, as Defendants have caused Plaintiff's and Class
23 members' principal loan balances to increase and limited these consumers' ability to make their future
24 house payments or obtain alternative home loan financing.

25 136. At all times relevant, there existed a gross inequality of bargaining power between the
26 parties to the ARM loan contracts. At all times relevant, Defendants unreasonably and unconscionably
27 exploited their superior bargaining position and foisted upon Plaintiff and the Class members extremely
28 harsh, one-sided provisions in the contract, which Plaintiff and Class members were not made aware of

1 and did not comprehend (*e.g.* Defendants fraud and failures to clearly and conspicuously disclose as
2 alleged herein), and which attempt to severely limit Defendants obligations under the contracts at the
3 expense of Plaintiff and Class members, as alleged herein. As a result of these extremely harsh, one-
4 sided provisions, including but not limited to the provisions which seek to limit the “teaser” interest rate
5 for one month or less, these provisions are unconscionable and therefore unenforceable.

6 137. WHEREFORE, Plaintiff and members of the Classes are entitled to declaratory relief,
7 compensatory damages proximately caused by Defendants breach of contract as alleged herein, pre-
8 judgment interest, costs of suit and other relief as the Court deems just and proper.

9
10 **X.**

11 **FIFTH CAUSE OF ACTION**

12 **Breach of Implied Covenant of Good Faith and Fair Dealing**

13 **(Against All Defendants)**

14 138. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

15 139. Defendants entered into written agreements with Plaintiff and Class members based on
16 representations Defendants made directly and indirectly to Plaintiff and the Class members about the
17 terms of their loans.

18 140. Defendants expressly and impliedly represented to Plaintiff and the Class members that
19 they would provide loans secured by Plaintiff’s and Class members’ homes, and that the loans would
20 have a fixed interest rate at promised low interest rate for a period of three (3) to five (5) years.

21 141. Defendants also represented that if Plaintiff and the Class members made the monthly
22 payments in the amount prescribed by Defendants that no negative amortization would occur. The Note
23 expressly states and/or implies that Plaintiff’s and Class members’ monthly payment obligation **will** be
24 applied to pay both principal and interest owed on the loan. The Note further states that for each
25 monthly payment Plaintiff and the Class members interest shall be paid before principal.

26 142. The written payment schedules prepared by Defendants, and applicable to Plaintiff’s and
27 Class members’ loans, show that the payment amounts owed by Plaintiff and Class members to
28 Defendants in year one are exactly equal to the amount required to pay off the loan if, indeed, the

1 interest actually charged on the loan was the low interest rate promised. If the Defendants acted as it
2 promised, the payments would have been sufficient to pay both principal and interest.

3 143. Instead, Defendants immediately raised Plaintiff's and Class members' interest rate and
4 applied **no part** of Plaintiff's and Class members' payment to principal. In fact, because Defendants
5 charged more interest than was disclosed and agreed to in the loans, Plaintiff and the Class members'
6 payments were insufficient to cover the interest that Defendants charged resulting in an increase in the
7 amount of principal Plaintiff and the Class members owed on their homes.

8 144. Defendants unfairly interfered with Plaintiff's and Class members' rights to receive the
9 benefits of the contract. These loans will cost Plaintiff and Class members thousands of dollars more
10 than represented by Defendants. Plaintiff and Class members did not receive the fixed low interest rate
11 home loan promised them by Defendants. Defendants have caused Plaintiff and Class members to lose
12 equity in their homes and therefore have denied Plaintiff and Class members the enjoyment, security of
13 one of their most important investments.

14 145. Plaintiff and Class members, on the other hand, did all of those things the contract
15 required of them. Plaintiff and Class members made monthly payments in the amount required by the
16 terms of the Note and reflected in the payment schedule prepared by Defendants.

17 146. At all times relevant, Defendants unreasonably denied Plaintiff and members of the Class
18 the benefits promised to them under the terms of the Note, including but not limited to a low interest rate
19 for the first three (3) to five (5) years of the loan, and clear and conspicuous disclosure of a payment
20 amount sufficient to pay both principle and interest so as to avoid negative amortization and the other
21 failures to comply with the disclosure requirements mandated by TILA, 15 U.S.C. §1601, et seq.,
22 Regulation Z and Official Staff Commentary issued by the Federal Reserve Board as alleged herein

23 147. Knowing the truth and motivated by profit and market share, Defendants have knowingly
24 and willfully breached the implied covenant of good faith and fair dealing by engaged in the acts and/or
25 omissions to mislead and/or deceive Plaintiff and others similarly situated as alleged herein.

26 148. Defendants breaches, as alleged herein were committed with willful and wanton
27 disregard for whether or not Plaintiff or others similarly situated would actually receive a home loan that
28 would provide the promised low interest and payment rate for the first three (3) to five (5) years of the

1 loan sufficient to pay both principle and interest.

2 149. Upon information and belief and at all times relevant, Defendants possessed full
3 knowledge and information concerning the above facts about the ARM loans, and otherwise sold these
4 ARM loans throughout the United States, including the State of California.

5 150. Defendants' placing of their corporate and/or individual profits over the rights of others
6 is particularly vile, base, contemptible, and wretched and said acts and/or omissions were performed on
7 the part of officers, directors, and/or managing agents of each corporate defendant and/or taken with the
8 advance knowledge of the officers, directors, and/or managing agents who authorized and/or ratified
9 said acts and/or omissions. Defendants thereby acted with malice and complete indifference to and/or
10 conscious disregard for the rights and safety of others, including Plaintiff and the General Public.

11 151. At all times relevant, Defendants' conduct, as alleged herein, was malicious, oppressive,
12 and/or fraudulent.

13 152. As a result of Defendants' conduct, Plaintiff and Class members have suffered harm.
14 Plaintiff and the Class members have incurred additional charges to their principal loan balance.
15 Plaintiff and Class members have incurred and will continue to incur additional interest charges on the
16 principal loan balance and surplus interest added to Plaintiff's and Class members' principal loan
17 balance. Furthermore, Defendants' breach has caused and/or otherwise placed Plaintiff and the Class
18 members in danger of losing their homes through foreclosure and, as a direct and proximate result of
19 said misconduct, caused Plaintiff's and the Class members' principal loan balances to increase limiting
20 these consumers' ability to make their future house payments or obtain alternative home loan financing.

21 153. WHEREFORE, Plaintiff and members of the Classes are entitled to declaratory relief, all
22 damages proximately caused by Defendants breach of the implied covenant of good faith and fair
23 dealing as alleged herein, punitive damages, pre-judgment interest, costs of suit and other relief as the
24 Court deems just and proper.

25 ///

26 ///

27 ///

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XI.

SIXTH CAUSE OF ACTION

**Violation of California's Unfair Competition Law, Bus. & Prof. Code §17200, *et seq.*, –
“Unlawful” Business Acts or Practices Predicated on Violations of Cal. Financial Code § 22302
(Against all Defendants)**

154. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

155. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class, and in her capacity as a private attorney general against all Defendants for their unlawful business acts and/or practices pursuant to California Business and Professions Code Sections 17200 *et seq.*, which prohibits all unlawful business acts and/or practices.

156. Plaintiff asserts these claims as she is a representative of an aggrieved group and as a private attorney general on behalf of the general public and other persons who have expended funds that the Defendants should be required to pay or reimburse under the equitable and restitutionary remedies provided by California Business and Professions Code Sections 17200 *et seq.*

157. The unlawful acts and practices of Defendants alleged above constitute unlawful business acts and/or practices within the meaning of California Business and Professions Code Sections 17200 *et seq.*

158. By engaging in the above-described acts and practices, Defendants have committed one or more acts of unfair competition within the meaning of Business and Professions Code Sections 17200, *et seq.*

159. Defendants' unlawful business acts and/or practice as alleged herein have violated numerous laws and/or regulations and said predicate acts are therefore *per se* violations of §17200, *et seq.* These predicate unlawful business acts and/or practices include Defendants violation of California Financial Code § 22302.

160. California Financial Code § 22302 applies to consumer loan contracts. It states that a loan found to be unconscionable pursuant to Section 1670.5 of the California Civil Code shall be deemed to be a violation of Financial Code § 22302.

///

1 161. The loan contracts prepared by Defendants and entered into between Plaintiff and Class
2 members and Defendants were, and are, unconscionable pursuant to Section 1670.5 of the Civil Code.

3 162. The relative bargaining power between Plaintiff and Class members and Defendants was
4 unequal. Plaintiff and Class members could not negotiate or change any of the particular terms related
5 to the loan and drafted by Defendants. To secure the loan Plaintiff and Class members were given no
6 choice but to make payments as described in the payment schedule and to accept and sign all the
7 associating documents numbering over a hundred pages.

8 163. The period of time where Defendants offered Plaintiff and Class members a low interest
9 rate, often was for only one month. Because Defendants packaged the loan contracts in such a manner
10 as to lead Plaintiff and Class members to believe that they had a low interest rate and therefore low
11 payments for three to five years, Plaintiff and Class members would end up owing significantly more
12 principle on their homes than before they entered the contracts and with a significant chance of losing
13 their homes through foreclosure.

14 164. Defendants drafted the subject ARM loan contracts for use on tens of thousands of
15 individuals. The loan process was such that individual terms of the contract could not be modified. The
16 standardized loan contracts were delivered to Plaintiff and Class members at the time of signature. The
17 loan process offered by Defendants did not permit for any meaningful negotiation of terms or even
18 review of the loan documents at the time of execution.

19 165. Defendants further inserted into the subject ARM loan contracts a draconian prepayment
20 penalty that has as its sole purpose to cause Plaintiff and Class members to continue under the terms of
21 their loans or lose thousands of dollars if Plaintiff try to refinance the loans.

22 166. The standardized loan contracts drafted by Defendants were so harsh and one-sided that
23 they could only lead Plaintiff and Class members to one result, a significant loss of money. As a result
24 of Defendants' unreasonable and unconscionable conduct, as alleged herein, Plaintiff and the Class
25 members have suffered direct and actual injury.

26 167. Because Defendants' Option ARM loan contract is unconscionable pursuant to Section
27 1670.5 of the Civil Code, Defendants' Option ARM loan violates Financial Code § 22302 and
28 constitutes a violation of the UCL.

168. As a direct and proximate result of the aforementioned acts, Defendants, and each of them, received monies and continues to hold the monies expended by Plaintiff and others similarly situated who purchased the ARM loans as described herein.

169. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a constructive trust over, and restitution of, the monies collected and realized by Defendants.

170. The unlawful acts and practices, as fully described herein, present a continuing threat to members of the public to be mislead and/or deceived by Defendants as described herein. Plaintiff and other members of the general public have no other remedy of law that will prevent Defendants misconduct as alleged herein from occurring and/or reoccurring in the future.

171. As a direct and proximate result of Defendants' unlawful conduct alleged herein, Plaintiff and Class Members have lost thousands if not millions of dollars of equity in their homes. Plaintiff and Class members are direct victims of the Defendants' unlawful conduct, as herein alleged, and each has suffered injury in fact, and have lost money or property as a result of Defendants' unfair competition.

172. WHEREFORE, Plaintiff and members of the Classes are entitled to equitable relief, including restitution, restitutionary disgorgement of all profits accruing to Defendants because of their unlawful, unfair and fraudulent, and deceptive practices, attorneys fees and costs, declaratory relief, and a permanent injunction enjoining Defendants from their unlawful activity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and all Class members pray for judgment against each Defendant, jointly and severally, as follows:

- A. An order certifying their case as a class action and appointing Plaintiff and their counsel to represent the Class;
- B. For actual damages according to proof;
- C. For compensatory damages as permitted by law;
- D. For consequential damages as permitted by law;
- E. For statutory damages as permitted by law;
- F. For punitive damages as permitted by law;

- 1 G. For rescission;
- 2 H. For equitable relief, including restitution;
- 3 I. For restitutionary disgorgement of all profits Defendants obtained as a result of their
- 4 unfair competition;
- 5 J. For interest as permitted by law;
- 6 K. For Declaratory Relief;
- 7 L. For a mandatory injunction requiring Defendants to permanently include in every Option
- 8 ARM loan and disclosure statement: (i) clear and conspicuous disclosure of the actual
- 9 interest rate on the Note(s) and disclosure statement(s) as required under 12 C.F.R. §
- 10 226.17 by; (ii) clear and conspicuous disclosure in the Note(s) and the disclosure
- 11 statement(s) that payments on the variable interest rate loan during the initial period at
- 12 the teaser rate will result in negative amortization and that the principal balance will
- 13 increase as required under 12 C.F.R. § 226.19; and (iii) clear and conspicuous disclosure
- 14 that the initial interest rate provided is discounted and does not reflect the actual interest
- 15 that Plaintiff and Class members would be paying on the Note(s).
- 16 M. For reasonable attorneys' fees and costs; and
- 17 N. For such other relief as is just and proper.

18 DATED: October 11, 2007

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Attorneys for Plaintiff and all others Similarly
Situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury to the full extent permitted by law.

DATED: October 11, 2007

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Situated

Exhibit No. 1

WORLD SAVINGS BANK, FSB

**ADJUSTABLE RATE MORTGAGE NOTE
PICK-A-PAYMENT LOAN**

GDW AVERAGE DEPOSIT ACCOUNT RATE (COST OF SAVINGS) INDEX

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE, MY MONTHLY PAYMENT AND MY UNPAID PRINCIPAL BALANCE. MY MONTHLY PAYMENT INCREASES, MY INTEREST RATE INCREASES AND MY PRINCIPAL BALANCE INCREASES ARE LIMITED. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT OF THE SAME DATE.

LOAN NUMBER: 0043651850

DATE: August 4, 2006

BORROWER(S): DOLORES MANDRIGUES, AN UNMARRIED WOMAN sometimes called "Borrower" and sometimes simply called "I" or "me."

PROPERTY ADDRESS: 524 CESTARIC DR, MILPITAS, CA 95035-4006

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$170,000.00, called "Principal," plus interest, to the order of the Lender. The Lender is WORLD SAVINGS BANK, FSB, a FEDERAL SAVINGS BANK,, ITS SUCCESSORS AND/OR ASSIGNEES, or anyone to whom this Note is transferred.

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at the yearly rate of 6.790%. The interest rate I will pay may change as described in this Section 2. Interest will be charged on the basis of a twelve month year and a thirty day month.

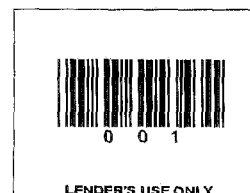
The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Change Dates

The interest rate I will pay may change on the 15th day of September, 2006 and on the same day every month thereafter. Each date on which my interest rate could change is called an "Interest Change Date." The new rate of interest will become effective on each Interest Change Date.

(C) Interest Rate Limit

My lifetime maximum interest rate limit is 11.950%, called "Lifetime Rate Cap."



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(D) Index

Beginning with the first Interest Change Date, my interest rate will be based on an "Index." The Index is the weighted average of the interest rates in effect as of the last day of each calendar month on the deposit accounts of the federally insured depository institution subsidiaries ("Subsidiaries") of Golden West Financial Corporation ("GDW"), as made available by GDW. Included in the deposit accounts for purposes of the Index calculation are all of the items and adjustments that GDW uses to calculate the line item currently called "cost of deposits" that appears in its quarterly and annual reports to shareholders as well as in other financial reports publicly distributed by GDW. The Index does not include deposit accounts owned by GDW or its Subsidiaries or other affiliates. The calculation of the Index includes adjustments for the effects of financial instruments related to the deposit accounts and other adjustments determined by GDW in its sole discretion as appropriate to accurately reflect the weighted average of interest rates on the deposit accounts. If an index is substituted as described in Section 2(F) of this Note, the alternative index will become the Index. The most recent Index figure available on each Interest Change Date is called the "Current Index."

(E) Calculation of Interest Rate Changes

Lender will calculate my new interest rate by adding 2.850 percentage points, called the "Margin," to the Current Index. Subject to the limit stated in Section 2(C) above, the result of this calculation will be my new interest rate until the next Interest Change Date.

If Lender fails to utilize the entire interest rate increase to which it is entitled under this Note on any Interest Change Date by failing to add all or part of the allowable Margin to the Current Index, then Lender may add any such allowable Margin to the Current Index on any future Interest Change Date. Lender may not, at a later date, "carryover" or add interest to which it is not entitled under this Note on any Interest Change Date.

(F) Alternative Index

The Lender may choose an alternative index to be the Index if the Index is no longer available. For purposes of this Section 2(F) the Index is not "available" if: (a) the Index is for any reason no longer published; or (b) the Lender, in its sole discretion, determines that the Index is calculated in a substantially different manner or based on substantially different information than at the time the Index became applicable to this Note; or (c) applicable laws or regulations prevent the Lender from using the Index to calculate interest under this Note. The selection of the alternative index shall be at Lender's sole discretion. The alternative index may be a national or regional index or another type of index approved by the Lender's primary regulator. The Lender will give me notice of the alternative index.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay Principal and Interest by making payments every month.

I will make my monthly payments on the 15th day of each month beginning on September 15, 2006. I will make these payments every month until I have paid (i) all the Principal and interest; and (ii) any other charges described below that I may owe under this Note; and (iii) any charges that may be due under the Security Instrument. If, on August 15, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1901 HARRISON STREET, OAKLAND, CALIFORNIA 94612 or at a different place if required by notice from the Lender.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 628.36. This amount will change as described in Sections 3(C) and 3(D) below. My initial monthly payment amount was selected by me from a range of initial payment amounts approved by Lender and may not be sufficient to pay the entire amount of interest accruing on the unpaid Principal balance.

(C) Payment Change Dates

My monthly payment will change as required by Section 3(D) below beginning on the 15th day of September, 2007 and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment will also change at any time Section 3(F) or 3(G) below requires me to pay a different amount.

I will pay the amount of my new monthly payment each month beginning on each Payment Change Date and as provided in Section 3(F) or 3(G) below.

(D) Calculation of Payment Changes

Subject to Sections 3(F) and 3(G), on the Payment Change Date my monthly payment may be changed to an amount sufficient to pay the unpaid principal balance, including any deferred interest as described in Section 3(E) below, by the Maturity Date. However, the amount by which my payment can be increased will not be more than 7-1/2% of the then existing Principal and interest payment. This 7-1/2% limitation is called the "Payment Cap." The Lender will perform this Payment Change calculation at least 60 but not more than 90 days before the Payment Change Date.

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(E) Deferred Interest; Additions to My Unpaid Principal

From time to time, my monthly payments may be insufficient to pay the total amount of monthly interest that is due. If this occurs, the amount of interest that is not paid each month, called "Deferred Interest," will be added to my Principal and will accrue interest at the same rate as the Principal.

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid principal balance can never exceed 125% of the Principal I originally borrowed, called "Principal Balance Cap." If, as a result of the addition of deferred interest to my unpaid principal balance, the Principal Balance Cap limitation would be exceeded on the date that my monthly payment is due, I will instead pay a new monthly payment. Notwithstanding Sections 3(C) and 3(D) above, I will pay a new monthly payment which is equal to an amount that will be sufficient to repay my then unpaid principal balance in full on the Maturity Date at the interest rate then in effect, in substantially equal payments.

(G) Payment Cap Limitation; Exceptions

Beginning with the 10th Payment Change Date and every 5th Payment Change Date thereafter, my monthly payment will be calculated as described in Section 3(D) above except that the Payment Cap limitation will not apply. Additionally, the Payment Cap limitation will not apply on the final Payment Change Date.

(H) Notice of Payment Changes

The Lender will deliver or mail to me a notice of any changes in the amount of my monthly payment, called "Payment Change Notice," before each Payment Change Date. The Payment Change Notice will include information required by law.

4. FAILURE TO MAKE ADJUSTMENTS

If for any reason Lender fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree that Lender may, upon discovery of such failure, then make the adjustments as if they had been made on time. I also agree not to hold Lender responsible for any damages to me which may result from Lender's failure to make the adjustment and to let the Lender, at its option, apply any excess monies which I may have paid to partial prepayment of unpaid Principal.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal before it is due is called a "Prepayment". When I make a Prepayment, I will tell the Lender in writing that I am doing so. The Lender may require that any partial Prepayments be made on the date my regularly scheduled payments are due. If I make a partial Prepayment, there will be no changes in the due dates or amount of my regularly scheduled payments unless the Lender agrees to those changes in writing. I may pay deferred interest on this Note at any time without charge and such payment will not be considered a "Prepayment" of Principal. During the first 3 years of the loan term if I make one or more Prepayments that, in the aggregate, exceed \$5,000 in any calendar month, I must pay a prepayment charge equal to 2% of the amount such Prepayments exceed \$5,000 in that calendar month. After the first 3 years of the loan term, I may make a full or partial Prepayment without paying any prepayment charge.

6. MAXIMUM LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Lender may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Lender has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Lender. The amount of the charge will be 5.00% of my overdue payment of Principal and interest. I will pay this late charge promptly but only once on each late payment.

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(B) Default

I will be in default if (i) I do not pay the full amount of each monthly payment on the date it is due; or (ii) I fail to perform any of my promises or agreements under this Note or the Security Instrument; or (iii) any statement made in my application for this loan was materially false or misleading or if any statement in my application for this loan was materially false or misleading by reason of my omission of certain facts; or (iv) I have made any other statement to Lender in connection with this loan that is materially false or misleading.

(C) Notice of Default

If I am in default, the Lender may send me a written notice, called "Notice of Default," telling me that if I do not pay the overdue amount by a certain date, the Lender may require me to pay immediately the amount of Principal which has not been paid and all the interest that I owe on that amount, plus any other amounts due under the Security Instrument.

(D) No Waiver by Lender

Even if, at a time when I am in default, the Lender does not require me to pay immediately in full as described above, the Lender will still have the right to do so if I am in default at a later time.

(E) Payment of Lender's Costs and Expenses

The Lender will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses may include, for example, reasonable attorneys' fees and court costs.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me or any Borrower at **524 CESTARIC DR, MILPITAS, CA 95035-4006**, or at a single alternative address if I give the Lender notice of my alternative address. I may give notice to Lender of a change in my address in writing or by calling Lender's customer service telephone number provided on my billing statement. I may designate only one mailing address at a time for notification purposes.

Except as permitted above for changes of address, any notice that must be given to the Lender under this Note will be given by mailing it by first class mail to the Lender at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who takes over these obligations is also obligated to keep all of the promises made in this Note. The Lender may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Lender to demand payment of amounts due. "Notice of Dishonor" means the right to require the Lender to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE - ACCELERATION

In addition to the protections given to the Lender under this Note, the Security Instrument dated the same date as this Note gives the Lender security against which it may proceed if I do not keep the promises which I made in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note and includes the following Paragraph **26**:

AGREEMENTS ABOUT LENDER'S RIGHTS IF THE PROPERTY IS SOLD OR TRANSFERRED

Acceleration of Payment of Sums Secured. Lender may, at its option, require immediate payment in full of all Sums Secured by this Security Instrument if all or any part of the Property, or if any right in the Property, is sold or transferred without Lender's prior written permission. Lender also may, at its option, require immediate payment in full if Borrower is not a natural Person and a beneficial interest in Borrower is sold or transferred without Lender's prior written permission. However, Lender shall not require immediate payment in full if this is prohibited by Federal Law in effect on the date of the Security Instrument.

If Lender exercises the option to require immediate payment in full, Lender will give me notice of acceleration. If I fail to pay all Sums Secured by this Security Instrument immediately, Lender may then or thereafter invoke any remedies permitted by this Security Instrument without further notice to or demand on me.

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Exception to Acceleration of Payment of Sums Secured. If the sale or transfer of all or any part of the Property, or of a beneficial interest in Borrower, if Borrower is not a natural Person, is the first one to occur after the date of this Security Instrument, Lender will not exercise the option to accelerate payment in full of all Sums Secured and the loan may be assumed if:

- (i) Lender receives a completed written application from transferee to evaluate the creditworthiness of transferee as if a new loan were being made to the transferee by Lender;
- (ii) Lender approves the creditworthiness of the transferee in writing;
- (iii) transferee makes a cash downpayment sufficient to meet Lender's then current underwriting standards;
- (iv) an assumption fee, in an amount to be determined by Lender (but not to exceed 1% of the balance of Principal and interest due under the Secured Notes at the time of sale or transfer of the Property or of the interest in the Borrower) is paid to Lender; and
- (v) the transferee executes an assumption agreement which is satisfactory to Lender.

The loan may be assumed under its then existing terms and conditions with one exception; the Lifetime Rate Cap may be changed. The Lifetime Rate Cap shall be changed to an interest rate which is the sum of the interest rate in effect on the date of a sale or transfer of the Property or beneficial interest in Borrower plus 5 percentage points, if that sum exceeds the Lifetime Rate Cap stated in the Secured Notes.

12. GOVERNING LAW; SEVERABILITY

This Note shall be governed by and construed under federal law and federal rules and regulations including those for federally chartered savings institutions, called "Federal Law." In the event that any of the terms or provisions of this Note are interpreted or construed by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those provisions so construed or interpreted and shall not affect the remaining provisions of this Note.

13. CLERICAL ERRORS

In the event the Lender at any time discovers that this Note or the Security Instrument or any other document related to this loan, called collectively the "Loan Documents," contains an error which was caused by a clerical mistake, calculation error, computer error, printing error or similar error, I agree, upon notice from the Lender, to reexecute any Loan Documents that are necessary to correct any such error(s) and I also agree that I will not hold the Lender responsible for any damage to me which may result from any such error.

14. LOST, STOLEN OR MUTILATED DOCUMENTS

If any of the Loan Documents are lost, stolen, mutilated or destroyed and the Lender delivers to me an indemnification in my favor, signed by the Lender, then I will sign and deliver to the Lender a Loan Document identical in form and content which will have the effect of the original for all purposes.

THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS.

00005

0043651850

SIGNATURE PAGE

NOTICE TO BORROWER(S):

BY SIGNING THIS NOTE YOU AGREE TO PAY A PREPAYMENT CHARGE IN CERTAIN CIRCUMSTANCES. PLEASE CAREFULLY READ THIS ENTIRE NOTE (INCLUDING THE PREPAYMENT PROVISION) BEFORE YOU SIGN IT.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED

(PLEASE SIGN YOUR NAME EXACTLY AS IT APPEARS BELOW)

BORROWER(S):

(Seal)

DOLORES MANDRIGUES

00006

WORLD SAVINGS

FEDERAL TRUTH IN LENDING DISCLOSURE REQUIRED BY REGULATION Z

Customer's Name:
DOLORES MANDRIGUESDate: July 24, 2006
Loan No.: 0043651850

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total price of your purchase on credit including your down payment of
6.853 %	\$ 283,991.46	\$ 167,713.28	\$ 451,704.74	Not Applicable
				Not Applicable

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments are Due:
		MONTHLY beginning on
12	\$ 628.36	10/01/06
12	675.49	10/01/07
12	726.15	10/01/08
12	780.61	10/01/09
12	839.16	10/01/10
12	902.10	10/01/11
12	969.76	10/01/12
12	1,042.49	10/01/13
12	1,120.68	10/01/14
12	1,204.73	10/01/15
239	1,437.64	10/01/16
1	1,434.42	09/01/36

VARIABLE RATE: THIS LOAN CONTAINS AN ADJUSTABLE RATE FEATURE. SEE THE ADJUSTABLE LOAN PROGRAM DISCLOSURE STATEMENT PREVIOUSLY GIVEN TO YOU.

This loan DOES NOT HAVE A DEMAND FEATURE.

Insurance: You may obtain property insurance from anyone you want who is acceptable to the Lender.

Security: You are giving a security interest in the real property located at 524 CESTARIC DR, MILPITAS, CA 95035-4006.

Filing Fees: \$ 80.00

Late Charge: If a payment is late, you will be charged 5.00% of the payment.

Prepayment: If you pay off the loan early, you MAY have to pay a penalty and you WILL NOT be entitled to a refund of ANY PART OF THE FINANCE CHARGE ALREADY PAID.

Assumption: SOMEONE BUYING YOUR HOUSE CAN ASSUME THE REMAINDER OF THE LOAN UNDER CERTAIN TERMS AND CONDITIONS. TERMS MAY BE DIFFERENT FROM YOUR ORIGINAL TERMS - SEE YOUR ADJUSTABLE LOAN PROGRAM DISCLOSURE STATEMENT.

Due on Sale: If the property securing the loan is sold or transferred to anyone without first obtaining Lender's written consent, all sums owed could become immediately due and payable. In this event failure to pay all the sums declared due and payable may result in the forced sale of the property.

See your Contract documents for additional information about non-payment, default, any required repayment in full before the scheduled date and other important terms and conditions of your loan.

ALL NUMERICAL DISCLOSURES EXCEPT THE LATE PAYMENT DISCLOSURE ARE ESTIMATED.

By signing below, you acknowledge that you received a copy of this FEDERAL TRUTH IN LENDING DISCLOSURE.

DOLORES MANDRIGUES

Date

GF004A1 (2004-03-1) UPFRONT

DISTRIBUTION: 1 COPY-RETURN SIGNED TO LENDER 1 COPY-CUSTOMER

CA
2 COPIES-FILE

LENDER'S USE ONLY

40000